

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

GENERAL SURGICAL ASSOCIATES, P.A., §
Plaintiff, §
v. § 5:14-CV-031-RP
HUMANA HEALTH PLAN OF TEXAS, INC. §
Defendant. §

ORDER

Before the Court are Defendant Humana Health Plan of Texas, Inc.'s Motion for Partial Summary Judgment filed November 14, 2014 (Dkt. #31), Plaintiff General Surgical Associates, P.A.'s Response to Defendant's Motion for Partial Summary Judgment filed December 12, 2014 (Dkt. #42), and Defendant's Reply to Plaintiff's Response filed December 19, 2014. The motion and briefs were referred to United States Magistrate Judge Henry J. Bemporad for a Report and Recommendation on the merits pursuant to 28 U.S.C. § 636(b), Rule 72 of the Federal Rules of Civil Procedure, and Rule 1(d) of Appendix C of the Local Rules of the United States District Court for the Western District of Texas, as amended. Judge Bemporad entered his Report and Recommendation on March 17, 2015 (Dkt. #48), recommending that Defendant's motion should be granted in part and denied without prejudice in part and that Plaintiff's remaining Texas state law claims should be remanded.

On March 31, 2015, General Surgical Associates filed Plaintiff's Written Objections to the Magistrate Judge's Report and Recommendation (Dkt. #52). Defendant's Response to these objections was filed on April 14, 2015 (Dkt. #53). In light of Plaintiff's objections, the Court has undertaken a *de novo* review of the entire case file in this action and finds that Judge Bemporad's Report and Recommendation is correct and should be approved and accepted by the Court for substantially the reasons stated therein.

Plaintiff broadly objects to Judge Bemporad's conclusion that the Federal Employees Health Benefits Act ("FEHBA") and the statutes and regulations governing the Medicare Advantage ("MA") program specifically preempt Plaintiff's claims brought under the Texas Prompt Pay Act ("TPPA"). (Objections, at 2-4). Each of Plaintiff's objections reiterates arguments raised in Plaintiff's response to the motion for summary judgment. These arguments were thoroughly addressed by Judge Bemporad in his Report and Recommendation, and this Court agrees with the magistrate judge's analysis. Thus, Plaintiff's objections are overruled.

For the foregoing reasons, **IT IS HEREBY ORDERED** that the objections set forth in Plaintiff General Surgical Associates, P.A.'s Written Objections to the Magistrate's Report and Recommendation (Dkt. #52) are **OVERRULED**.

IT IS FURTHER ORDERED that the Report and Recommendation of the United States Magistrate Judge (Dkt. #48) is hereby **APPROVED** and **ACCEPTED** by this Court.

IT IS FURTHER ORDERED that Defendant Humana Health Plan of Texas, Inc.'s Motion for Summary Judgment (Dkt. #31) is **GRANTED IN PART** and **DENIED WITHOUT PREJUDICE IN PART**. The Motion is **GRANTED** as to Humana's affirmative defenses related to FEHBA and MA, and accordingly, the claims to which these affirmative defenses apply are **DISMISSED**.

IT IS FINALLY ORDERED that the Remainder of Plaintiff General Surgical Associates, P.A.'s claims are **REMANDED**, and Defendant Humana Health Plan of Texas, Inc.'s motion for summary judgment with regard to those claims is **DENIED WITHOUT PREJUDICE**.

SIGNED April 23, 2015.



ROBERT L. PITMAN
UNITED STATES DISTRICT JUDGE